

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

<p>ORLANDO DONES-VARGAS,</p> <p style="text-align: center;">Movant,</p> <p style="text-align: center;">vs.</p> <p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">4:20-CV-04124-KES</p> <p style="text-align: center;">ORDER GRANTING MOVANT'S MOTION FOR LEAVE TO PROCEED ON APPEAL IN FORMA PAUPERIS</p>
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Movant, Orlando Dones-Vargas, filed a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. Docket 1. Judgment was entered against Dones-Vargas, and he filed a notice of appeal. Dockets 33, 34. The court denied Dones-Vargas a certificate of appealability. *See* Docket 32. Dones-Vargas now files a motion for leave to proceed on appeal in forma pauperis and included a prisoner trust account report. Dockets 35, 45.

The Eighth Circuit historically has looked to district courts to rule on in forma pauperis motions for appeal and has held that the filing-fee provisions of the PLRA do not apply to habeas corpus actions. *Malave v. Hedrick*, 271 F.3d 1139, 1140 (8th Cir. 2001). To determine whether a habeas petitioner qualifies for in forma pauperis status, the court need only assess (1) whether the petitioner can afford to pay the full filing fee, and (2) whether the petitioner's appeal is taken in "good faith." 28 U.S. C. § 1915(a)(1), (3).

Dones-Vargas's prisoner trust account report indicates that he has average monthly deposits to his prisoner trust account of \$197.58 and an

average monthly balance of \$61.78. Docket 45 at 1. Dones-Vargas's notice of appeal appears to be taken in good faith. Because Dones-Vargas has insufficient funds to pay the \$505.00 appellate filing fee, his motion for leave to proceed on appeal in forma pauperis (Docket 35) is granted.

IT IS ORDERED:

1. That Dones-Vargas's motion for leave to proceed on appeal in forma pauperis (Docket 35) is granted.

Dated December 29, 2021.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER

UNITED STATES DISTRICT JUDGE